



Department of Energy
Grand Junction Projects Office
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Subject: The Department of Energy (DOE) Position on the Resource Conservation and Recovery Act (RCRA) Relevance and Appropriateness to Monticello Remedial Action Project (MRAP) and the Monticello Vicinity Properties (MVP) Mill Tailings

Dear Sirs:

The DOE has received your comments (L. Nguyen to D. Williamson letter dated June 22, 1989 and Bradford to Nguyen letter dated June 21, 1989) on our Applicable, Relevant and Appropriate Requirements (ARARs) submittal for the MRAP and MVP and have several concerns which need to be resolved. Our major concern reflects a substantial difference between DOE and the Environmental Protection Agency/State of Utah (EPA/Utah) concerning the requirements, specifically RCRA, that will govern the conduct of these projects. Your letter stated that RCRA should be relevant and appropriate because the tailings are similar to a hazardous waste in that they contain heavy metals. As negotiated during the Federal Facility Agreement process, EPA's Uranium Mill Tailings Radiation Control Act (UMTRCA) regulations in 40 CFR 192 establish the appropriate technical standards for these projects. In addition, EPA proposed Remedial Action Standards at Inactive Uranium Process Sites (52 FR 36000-36008, September 24, 1987) incorporates the appropriate RCRA requirements including groundwater protection standards in 40 CFR 264.92, 264.93, 264.94 and 264.95, and closure performance standards in 264.111. Additionally, monitoring activities for a period of time comparable to that given in 40 CFR 264.117 are required during the post-disposal period, and requirements for corrective action programs (similar to 40 CFR 264.100) are given in the proposed UMTRCA regulations.

In addition to the above requirements for protection from non-radioactive constituents, 40 CFR 192.02 provides additional protection standards and requirements for the control of radiological hazards that are not addressed by RCRA.

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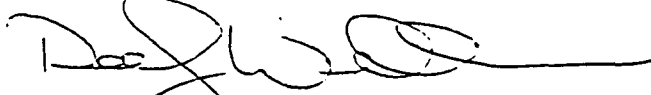
The mill tailings, which contain various naturally occurring heavy metals, do not contain RCRA hazardous wastes as identified in 40 CFR 261. The mere presence of heavy metals in the mill tailings should not make the tailings similar to a RCRA hazardous waste. It is our interpretation that the Extraction Procedure (EP) toxicity test is designed to specifically identify non-listed RCRA hazardous wastes. (See Preamble discussion 43 FR 33110, May 19, 1980). The test recognizes that the availability of the heavy metals to the environment, not their presence, is the primary concern in determining whether a waste is hazardous. We believe that this test removes any ambiguity of whether a waste is "similar" to a hazardous waste. As stated in the ARARs analysis, mill tailings, that are similar in nature to Monticello's, have been subjected to the EP toxic test and have passed (*Draft Final Grand Junction Projects Office Remedial Investigation, DOE/ID/12584-16, April, 1989, U.S. Department of Energy*).

The draft MRAP RI identifies the heavy metals and their concentrations found in the Monticello Mill Tailings (Chapter 3.2.3). All are naturally occurring and are not a result of the milling process. Some metals exist in concentrations similar to mineralized sandstone, some in quantities similar to uranium ores, and a few heavy metal concentrations in the tailings are elevated due to the ore refining process. Given the fact that these metals are naturally occurring and can be shown to not be available to the environment in quantities exceeding regulatory limits using the EP toxicity test, we do not understand the basis for the EPA/State position that RCRA be an ARAR for the mill tailings. We request that the basis for EPA's and the State's conclusion that the tailings are similar to a hazardous waste and that RCRA should be an ARAR, be clarified and provided for our review. Given the August 28 deadline for issuing the draft RI/FS to the public, and in order to avoid any schedule extensions, we need an immediate resolution to this issue.

We plan to submit our other concerns mentioned earlier in a separate letter to avoid confusing the issues. Please realize that DOE is not proposing that RCRA would not apply if a separate RCRA hazardous waste, not previously anticipated, was discovered.

If you have any questions or wish to set up a meeting, please contact me at (303) 248-6009.

Sincerely,



Dee J. Williamson
Monticello Project Manager
Grand Junction Projects Office

cc: WE Murphie - NE-23/GTN
A Feldt - EH-232/FORS
S Miller - GC-11/FORS
B Mathis/MRAP file
C Nichols - DOE/ID
R Throckmorton - DOE/ID